

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MISHAN CHRISTOPHER KELLER,

Plaintiff,

v.

F.D.A., ALLENTOWN POLICE, and  
LEHIGH COUNTY PRISON,

Defendants.

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CIVIL ACTION NO. 18-4206

**ORDER**

**AND NOW**, this 30th day of October, 2018, after considering the application for leave to proceed *in forma pauperis* and complaint filed by the *pro se* plaintiff, Mishan Christopher Keller (Doc. Nos. 1, 2); and for the reasons set forth in the separately filed memorandum opinion, it is hereby **ORDERED** as follows:

1. The application for leave to proceed *in forma pauperis* (Doc. No. 1) is **GRANTED**, and the plaintiff has leave to proceed *in forma pauperis*;

2. The complaint (Doc. No. 2) is **DEEMED** filed;

3. The complaint is **DISMISSED** as follows:

a. The plaintiff's claims against the Allentown Police and the Lehigh County Prison are **DISMISSED WITH PREJUDICE**;

b. The plaintiff's claims challenging his placement in the ARD program for DUI, which are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), are **DISMISSED WITHOUT PREJUDICE** to the plaintiff's right to pursue them in a new lawsuit if and when such placement is invalidated; and

c. The plaintiff's claim against the FDA is **DISMISSED WITHOUT PREJUDICE** to the plaintiff's right to file an amended complaint;

4. With respect to the plaintiff's claim that the FDA mislabeled the medication he was previously taking, he has leave to file an amended complaint within thirty (30) days of the date of this order in the event that he can state a plausible, exhausted claim for relief under the Federal Tort Claims Act against the United States. The amended complaint must describe the basis for the plaintiff's claim against the United States and describe how the FDA was allegedly negligent in labeling the medication. The amended complaint must also describe how the plaintiff has exhausted his administrative remedies prior to filing this suit. Upon the filing of an amended complaint, the clerk of court shall not make service until so ordered by the court;

5. The clerk of court is **DIRECTED** to send the plaintiff a blank form complaint to be used by a non-prisoner filing a civil action bearing the civil action number for this case. The plaintiff may use this form to prepare his amended complaint; and

6. If the plaintiff fails to file an amended complaint, his case may be dismissed without prejudice for the failure to prosecute without further notice.

BY THE COURT:

/s/ Edward G. Smith  
EDWARD G. SMITH, J.